



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3722-99

23 September 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552
(b) SECNAVINST 1910.4A

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the general discharge issued on 3 July 1969.

2. The Board, consisting of Messrs. Cali, Morgan, and McCulloch, reviewed Petitioner's allegations of error and injustice on 15 September 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 27 May 1969 for four years at age 18. His enlistment papers show that he answered "No" to the questions "Have you ever engaged in sexual activity with another person who is of the same sex as your yourself?" and "Are you attracted sexually or do you desire any sexual activity with persons of the same sex as yourself?"

d. Petitioner's record reflects that he served without incident until 17 June 1969 when he was advised by a command criminal investigator that he was suspected of violations of the Uniform Code of Military Justice. He then stated that he answered the questions regarding homosexual activity because he wanted to get away from being a homosexual and disclosed this information because he was afraid that he would commit homosexual acts while in the service and would be caught and punished. He admitted that he was homosexual and had committed more than 150 acts with his uncle and another individual prior to service. On the same day, he was notified that he was being considered for administrative discharge for the good of the service by reason of misconduct due to fraudulent enlistment. He was advised of his procedural rights and waived those rights.

e. On 18 June 1969, Petitioner was referred to the recruit evaluation unit for a psychiatric evaluation. The examining psychiatrist opined that there was no clinical evidence that suggested Petitioner was feigning homosexuality to obtain early separation from the service or to avoid disagreeable duty.

f. On 26 June 1969 the discharge authority directed a general discharge by reason of misconduct due to fraudulent entry. Petitioner was so discharged on 3 July 1969.

g. Reference (b) sets forth the Department of the Navy's current policies, standards and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with naval service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual acts or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the

homosexual act was committed as the result of use of force, with a person under age 16, with a subordinate, openly in public view, for compensation, aboard a ship or aircraft, or in another location subject to military control.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that Petitioner was properly discharged by reason of fraudulent enlistment. However, the primary basis for his separation was his voluntary admission of homosexual acts prior to service. Had he not voluntarily disclosed this information but later committed a homosexual act, he would have been subjected to separation by reason of homosexuality. The Board notes that Petitioner had no disciplinary problems during his short period of service. The Board also notes the current Department of the Navy Policy as established in reference (b) and its radical departure from the policy which was in effect on 3 July 1969 the date of Petitioner's discharge. The Board believes that it would be in the interest of justice to retroactively apply the standards of reference (b) to Petitioner's case. Using those standards, the Board finds that relief in the form of recharacterization to honorable is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of fraudulent entry on 3 July 1969 vice the general discharge actually issued on that date. This should include the issuance of a new DD Form 214.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 8 June 1999.

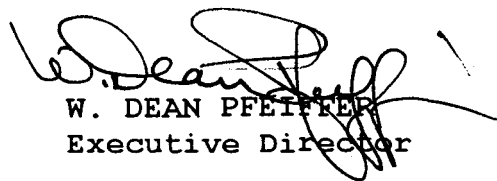
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFETTER
Executive Director